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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,048	06/26/2001	Bhavesn Mistry	S63.2-9764	1791

490 7590 04/18/2003

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

THOMPSON, KATHRYN L

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 04/18/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/892,048

Applicant(s)

MISTRY ET AL

Examiner

Kathryn L Thompson

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3-5 and 7.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____




MICHAEL J. HAYES
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Examiner maintains that Fischell discloses all of Applicant's claimed limitations. In Applicant's Claim 1, wherein Applicant recites, "the balloon being made of a material which includes at least one radiopaque portion," Examiner interprets the word "includes" to mean that the balloon includes a radiopaque portion, not that the balloon is made up of a radiopaque portion. The balloon including a radiopaque portion can be interpreted to mean that the balloon has a radiopaque portion on it. That is, the balloon is of one material and it includes another material, such as a radiopaque portion. If Applicant's intention was to claim a balloon that is made up of a radiopaque material, then Applicant should have used different claim language to positively recite his intention. For example, "the balloon being made of a material, said material made of..." or "the balloon being made of a material, said material consisting of..." In addition, with regards to Applicant's after final response, stating that, "Although radiopaque ink is preferred, radiopaque metal powder could be used when molding the balloon to create radiopaque regions," Examiner does not interpret this statement to mean that the balloon itself is made up of a radiopaque material. Examiner interprets this statement to mean that the balloon is molded (from one material) and then another material (radiopaque metal powder) is added to form radiopaque regions on the balloon.